

AMENDED IN ASSEMBLY APRIL 27, 2011

AMENDED IN ASSEMBLY APRIL 4, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1102

Introduced by Assembly Member Lara

February 18, 2011

An act to amend Sections 8544.5, 8545, ~~8546~~, 8546.5, ~~8546.7~~, and 8548.9 of, and to repeal Section 12430 of, and to repeal Article 2 (commencing with Section 10520) of Chapter 4 of Part 2 of Division 2 of Title 2 of, the Government Code, relating to the State Auditor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1102, as amended, Lara. State Auditor.

Existing law sets out the authority and duties of the State Auditor in conducting audits and surveys of specified entities, and of contracting for goods and services on behalf of the Bureau of State Audits. Existing law provides for reimbursement of the State Auditor ~~or Auditor~~ by annual appropriation in the Budget Act, for specified costs incurred by the State Auditor in the performance of certain duties.

This bill would revise the provisions governing the scope and conduct of audits and surveys by the State Auditor, ~~the authority of the State Auditor to contract for goods and services on behalf of the bureau~~, and costs for which the State Audit Fund may be reimbursed.

This bill would also delete various obsolete provisions of law.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 8544.5 of the Government Code is
2 amended to read:

3 8544.5. (a) There is hereby established in the State Treasury
4 the State Audit Fund. Notwithstanding Section 13340, the State
5 Audit Fund is continuously appropriated for the expenses of the
6 State Auditor. There shall be appropriated annually in the Budget
7 Act to the State Audit Fund, from the General Fund and the Central
8 Service Cost Recovery Fund, the amount necessary to reimburse
9 the State Audit Fund for the cost of audits and any other duties to
10 be performed that are not directly reimbursed under subdivision
11 (c), including for the cost of any other duties imposed on the bureau
12 by statute. "Cost of audits or any other duties" means all direct
13 and indirect costs of conducting the audits or other duties, and any
14 other expenses incurred by the State Auditor in fulfilling his or
15 her statutory responsibilities.

16 (b) With regard to the funds appropriated pursuant to subdivision
17 (a), upon certification by the State Auditor of estimated costs on
18 a monthly basis, the Controller shall transfer the amount thus
19 certified from the General Fund or the Central Service Cost
20 Recovery Fund, as applicable, to the State Audit Fund. The
21 Controller shall thereafter issue warrants drawn against the State
22 Audit Fund upon receipt of claims certified by the State Auditor.

23 (c) To ensure appropriate reimbursement from federal and
24 special funds for the costs of the duties performed pursuant to
25 Section 8546.3, the State Auditor may directly bill state agencies
26 for the costs incurred, subject to the approval of the Director of
27 Finance.

28 (d) To ensure adequate oversight of the operations of the bureau,
29 the Milton Marks "Little Hoover" Commission on California State
30 Government Organization and Economy shall annually obtain the
31 services of an independent public accountant to audit the State
32 Audit Fund and the operation of the bureau to assure compliance
33 with state law, including Section 8546. The results of this audit
34 shall be submitted to the commission and shall be a public record.

35 (e) To ensure that audits of the Milton Marks "Little Hoover"
36 Commission on California State Government Organization and
37 Economy are conducted in conformity with government auditing
38 standards, any audit of the commission that is required or permitted

1 by law shall be conducted by the independent public accountant
2 selected pursuant to subdivision (d).

3 SEC. 2. Section 8545 of the Government Code is amended to
4 read:

5 8545. The State Auditor shall not destroy any papers or
6 memoranda used to support a completed audit sooner than three
7 years after the audit report is released to the public. All books,
8 papers, records, and correspondence of the bureau pertaining to
9 its work are public records subject to Chapter 3.5 (commencing
10 with Section 6250) of Division 7 of Title 1 and shall be filed at
11 any of the regularly maintained offices of the State Auditor, except
12 that none of the following items or papers of which these items
13 are a part shall be released to the public by the State Auditor, his
14 or her employees, or members of the commission:

15 (a) Personal papers and correspondence of any person providing
16 assistance to the State Auditor when that person has requested in
17 writing that his or her papers and correspondence be kept private
18 and confidential. Those papers and correspondence shall become
19 public records if the written request is withdrawn or upon the order
20 of the State Auditor.

21 (b) Papers, correspondence, memoranda, or any substantive
22 information pertaining to any audit not completed.

23 (c) Papers, correspondence, or memoranda pertaining to any
24 audit that has been completed, which papers, correspondence, or
25 memoranda are not used in support of any report resulting from
26 the audit.

27 (d) Any survey of public employees that the State Auditor
28 determines should be kept confidential because the employees
29 have expressed fear of retaliation by their employer if they respond
30 to the survey.

31 ~~SEC. 3. Section 8546 of the Government Code is amended to~~
32 ~~read:~~

33 ~~8546. It is the intent of the Legislature that the Bureau of State~~
34 ~~Audits have the independence necessary to conduct all of its audits~~
35 ~~in conformity with "Government Auditing Standards" published~~
36 ~~by the Comptroller General of the United States and the standards~~
37 ~~published by the American Institute of Certified Public~~
38 ~~Accountants, free from influence of existing state control agencies~~
39 ~~that could be the subject of audits conducted by the bureau.~~
40 ~~Therefore, all of the following exclusions apply to the office:~~

1 ~~(a) Notwithstanding Section 19790, the State Auditor shall~~
2 ~~establish an equal employment opportunity program that shall~~
3 ~~meet the criteria and objectives established by the State Personnel~~
4 ~~Board. The State Auditor shall report annually to the State~~
5 ~~Personnel Board and the commission regarding the program.~~

6 ~~(b) Notwithstanding Section 12470, the State Auditor shall be~~
7 ~~responsible for maintaining its payroll system. In lieu of audits of~~
8 ~~the uniform payroll system performed by the Controller or any~~
9 ~~other department, the office shall contract pursuant to subdivision~~
10 ~~(e) of Section 8544.5 for an annual audit of its payroll and financial~~
11 ~~operations by an independent public accountant.~~

12 ~~(c) Notwithstanding Section 13292, the State Auditor is~~
13 ~~delegated the authority to establish and administer the fiscal and~~
14 ~~administrative policies of the bureau in conformity with the State~~
15 ~~Administrative Manual without oversight by the Department of~~
16 ~~Finance, the Department of Information Technology, or any other~~
17 ~~state agency.~~

18 ~~(d) Notwithstanding Section 11032, the State Auditor may~~
19 ~~approve actual and necessary traveling expenses for travel outside~~
20 ~~the state for officers and employees of the bureau.~~

21 ~~(e) Notwithstanding Section 11033, the State Auditor or officers~~
22 ~~and employees of the bureau may be absent from the state on~~
23 ~~business of the state upon approval of the State Auditor or Chief~~
24 ~~Deputy State Auditor.~~

25 ~~(f) Sections 11040, 11042, and 11043 shall not apply to the~~
26 ~~Bureau of State Audits. The State Auditor may employ legal~~
27 ~~counsel under those terms that he or she deems necessary to~~
28 ~~conduct the legal business of, or render legal counsel to, the State~~
29 ~~Auditor.~~

30 ~~(g) The provisions and definitions of Article 2 (commencing~~
31 ~~with Section 11342.510) of Chapter 3.5 of Division 3 shall not be~~
32 ~~construed to include the Bureau of State Audits. The State Auditor~~
33 ~~may adopt regulations necessary for the operation of the bureau~~
34 ~~pursuant to the provisions of the Administrative Procedure Act~~
35 ~~(Chapter 3.5 (commencing with Section 11340) of Division 3),~~
36 ~~but these regulations shall not be subject to the review or approval~~
37 ~~of the Office of Administrative Law.~~

38 ~~(h) The State Auditor shall be exempt from all contract~~
39 ~~requirements of the Public Contract Code that require oversight,~~
40 ~~review, or approval by the Department of General Services or any~~

other state agency. The State Auditor may contract on behalf of the State of California for goods and services that he or she deems necessary for the furtherance of the purposes of the bureau, and shall be deemed to have all the powers and duties conferred on the Director of General Services in the Public Contract Code for that purpose.

(i) (1) Subject to Article VII of the California Constitution, the State Auditor is delegated the authority to establish and administer the personnel policies and practices of the Bureau of State Audits in conformity with Part 2.6 (commencing with Section 19815) of Division 5 of Title 2 without oversight or approval by the Department of Personnel Administration.

(2) At the election of the State Auditor, officers and employees of the bureau may participate in benefits programs administered by the Department of Personnel Administration subject to the same conditions for participation that apply to civil service employees in other state agencies. For the purposes of benefits programs administration only, the State Auditor is subject to the determinations of the department. The Bureau of State Audits shall reimburse the Department of Personnel Administration for the normal administrative costs incurred by the Department of Personnel Administration and for any extraordinary costs resulting from the inclusion of the bureau employees in these state benefit programs.

~~SEC. 4.~~

SEC. 3. Section 8546.5 of the Government Code is amended to read:

8546.5. (a) The State Auditor may establish a high-risk government agency audit program for the purpose of identifying, auditing, and issuing reports on any agency of the state, whether created by the California Constitution or otherwise, as well as statewide issues, that the State Auditor identifies as being at high risk for the potential of waste, fraud, abuse, and mismanagement or that has major challenges associated with its economy, efficiency, or effectiveness.

(b) In addition to identifying an agency as high risk on the basis of weaknesses identified in audit and investigative reports produced by the bureau, the State Auditor may consult with the Legislative Analyst, the Milton Marks “Little Hoover” Commission on California State Government Organization and Economy, the

1 Office of Inspector General within the Department of Corrections,
2 the Department of Finance, and other state agencies that have
3 oversight responsibilities over any other agency of the state, in
4 identifying state agencies that are at high risk.

5 (c) The State Auditor shall notify the Joint Legislative Audit
6 Committee whenever it identifies a state agency as at high risk.

7 (d) The State Auditor may issue audit reports with
8 recommendations for improvement in state agencies, and for
9 statewide issues, identified as at high risk not less than once every
10 two years.

11 (e) The State Auditor may require state agencies identified as
12 high risk, or as responsible for all or a portion of a statewide issue
13 identified as high risk, to periodically report to the auditor
14 regarding the status of recommendations for improvement made
15 by the State Auditor or other state oversight agencies.

16 ~~SEC. 5. Section 8546.7 of the Government Code is amended~~
17 ~~to read:~~

18 ~~8546.7. Notwithstanding any other provision of law, every~~
19 ~~contract involving the expenditure of public funds in excess of ten~~
20 ~~thousand dollars (\$10,000) entered into by any state agency, board,~~
21 ~~commission, or department or by any other public entity, including~~
22 ~~a city, county, city and county, or district, shall be subject to the~~
23 ~~examination and audit of the State Auditor, at the request of the~~
24 ~~public entity or as part of any audit of the public entity, or when~~
25 ~~the State Auditor determines that an audit of a contract is~~
26 ~~warranted, for a period of three years after final payment under~~
27 ~~the contract. Every contract shall contain a provision stating that~~
28 ~~the contracting parties shall be subject to that examination and~~
29 ~~audit. The failure of a contract to contain this provision shall not~~
30 ~~preclude the State Auditor from conducting an examination and~~
31 ~~audit of the contract at the request of the public entity entering into~~
32 ~~the contract or as part of any audit of the public entity.~~

33 ~~It is the intent of the Legislature that the Regents of the~~
34 ~~University of California include in contracts involving the~~
35 ~~expenditure of state funds in excess of ten thousand dollars~~
36 ~~(\$10,000) a provision stating that the contracting parties shall be~~
37 ~~subject to the examination and audit of the State Auditor, at the~~
38 ~~request of the regents or as part of any audit of the university, for~~
39 ~~a period of three years after final payment under the contract.~~

1 The examinations and audits under this section shall be confined
2 to those matters connected with the performance of the contract,
3 including, but not limited to, the costs of administering the contract.

4 ~~SEC. 6.~~

5 *SEC. 4.* Section 8548.9 of the Government Code is amended
6 to read:

7 8548.9. (a) The State Auditor shall, by January 15th of each
8 year, report to the Joint Legislative Budget Committee, the Joint
9 Legislative Audit Committee, and the Department of Finance with
10 respect to each recommendation he or she has made based on an
11 audit or investigation that was reported more than one year prior
12 and that has not been fully implemented by the affected agency.

13 (b) The report shall clearly identify the state agency audited or
14 investigated, the audit or investigation that contained the
15 recommendation, a brief description of the recommendation, the
16 date it was issued, and the most recent explanation provided by
17 the agency to the State Auditor on the status of the
18 recommendation.

19 (c) Any state agency that is notified by the State Auditor that it
20 has not fully implemented a recommendation made pursuant to
21 this chapter more than one year prior, shall do either of the
22 following:

23 (1) Provide a written report to the State Auditor, the respective
24 policy committees and budget subcommittees of the Assembly
25 and Senate with oversight of the agency, and the Department of
26 Finance, explaining why the audit recommendation or investigation
27 has not been fully implemented.

28 (2) Notify all entities described in subdivision (a) that it will
29 begin implementing the audit recommendation or investigation
30 recommendation within 90 days of the notification by the State
31 Auditor, and include the estimated date of full implementation.

32 (d) For the purposes of this section, “state agency” means a state
33 agency as defined by Section 11000, the California State
34 University, the Supreme Court, a Court of Appeal, a superior court,
35 and the Administrative Office of the Courts.

36 ~~SEC. 7.~~

37 *SEC. 5.* Article 2 (commencing with Section 10520) of Chapter
38 4 of Part 2 of Division 2 of Title 2 of the Government Code is
39 repealed.

1 ~~SEC. 8.~~

2 *SEC. 6.* Section 12430 of the Government Code is repealed.

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